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EASTERN DIST. OF CALIF.

BY  DEPUTY

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

MAILE C. STEWART,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania corporation,
CIGNA Corporation, a Delaware Corporation,
CONNECTICUT GENERAL
CORPORATION, a Connecticut Corporation,
WRIGHT & COMPANY, a District of
Columbia corporation, SPECIAL AGENT'S
TRUST FOR INSURANCE, a District of
Columbia corporation, SPECIAL AGENTS
MUTUAL BENEFIT ASSOCIATION, a
District of Columbia corporation, and DOES 1
through 100, inclusive,

Defendants.

Case No. CIV-F 02-6212 OWW LJO

ORDER REGARDING LIFE
INSURANCE COMPANY OF NORTH
AMERICA'S MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL SUMMARY
ADJUDICATION

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Defendant Life Insurance Company of North America's ("LINA") motion for summary judgment, or in the alternative, partial summary adjudication came before this Honorable Court on March 29, 2004.

Having reviewed LINA's motion for summary judgment, or in the alternative, partial summary adjudication, accompanying memorandum of points and authorities, and declaration of Sandra Townsend, and other supporting papers on file in this action, and having considered the arguments of counsel, and good cause appearing,

IT IS HEREBY ORDERED:

1. LINA's motion for summary judgment on Plaintiff's breach of contract claim is DENIED for the reasons set forth below:

Under California law, the elements of a claim for breach of contract are: (1) the existence of a contract; (2) Plaintiff's performance or excuse for nonperformance; (3) Defendant's breach; and (4) damages to Plaintiff. *First Commercial Mortgage Co. v. Reece*, 89 Cal.App.4th 731, 745 (2001) (citing 4 Witkin Cal. Procedure (4th ed. 1997), at § 476, p. 570).

According to LINA, Special Agents' Trust for Insurance ("SATI") contracted with LINA to provide group insurance benefits to SATI members, such as Plaintiff, provided the member complied with the conditions necessary to keep insurance coverage in force. LINA issued the group insurance policy to SATI. Wright & Co., a third party administrator, performed the administrative duties for SATI and the group insurance policy under an administrative services agreement ("ASA"). LINA's Motion for Summary Judgment ("LINA's Motion") at 12:8-11. Based on the evidence reviewed, the Court finds that a valid contract existed.

LINA alleges that "[e]ven assuming *arguendo* that a valid contractual relationship existed between Mr. Stewart and SATI to provide life insurance coverage, Mr. Stewart failed to perform on that contract..." LINA's Opp'n at 12:13-15. Plaintiff and LINA do not dispute that from January 1987 until February 1, 1996 when the premium due from Stewart was paid, Mr. Stewart was a participant in SATI's group life insurance program. *Id.* at 5:3-9. Thereafter, Mr. Stewart allegedly paid his premiums late on three occasions before February 2, 1996. *Id.* at 12 n. 3. LINA alleges that Mr. Stewart did not pay any premiums on or after February 2, 1996.

1 Plaintiff concedes failure to perform and pay premiums but maintains that the Stewarts
 2 were excused from having to pay premiums when LINA, through its agent Wright and Company,
 3 breached the contract "by failing to provide [Mr.] Stewart with a premium due notice or notice of
 4 cancellation for the period in question excused Stewart's performance of the contract."
 5 Plaintiff's Opp'n to LINA's Motion at 12:10-15 and 16:4-6.

6 The sole issue is whether the Stewarts' breach by failure to pay premiums after February
 7 2, 1996 was excused. The critical issues are: (1) whether premium notices were sent to the
 8 Stewarts; and (2) whether any legal obligation existed that required such notices to be sent.
 9 Neither LINA nor its agent Wright & Co. have written evidence that a 1996 billing statement or
 10 notice of cancellation of policy coverage was sent to Mr. Stewart or Plaintiff. Whether the
 11 Stewarts received either a billing statement or notice of cancellation is a disputed issue of
 12 material fact.

13 Plaintiff alleges without citing a statute, rule, regulation or policy provision that
 14 "[a]ccording to the ASA, Plaintiff and/or Stewart were entitled to receive[] notice of the
 15 premium amount and the due date for such premium prior to providing payment for coverage."
 16 *Id.* at 13:22-24. The critical language on which Plaintiff relies to argue that LINA had a duty to
 17 send premium statements or any other form of notice to the insured is allegedly found in the
 18 "Reporting Requirement" portion of the Administrative Provisions section of the Policy. LINA
 19 argues that the language of the policy addresses only administrative requirements between SATI
 20 and LINA and does not address any issues related to Mr. Stewart or any other "covered member"
 21 or "insured." LINA's Motion at 7:7-10. LINA's interpretation of the policy is consistent with
 22 the policy's language.

23 The premium provision does not state that LINA must provide notice to each member
 24 insured. There is no written provision in this insurance contract that requires the insurer to notify
 25 the individual member insureds when a payment is due. Moreover, this policy is expressly
 26 subject to cessation of coverage without notice if the policyholder or the insured fails to pay a
 27 premium on the due date after a 31 day grace period has passed. LINA's Reply at 30-31. A
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1 party cannot breach a nonexistent contract requirement. Plaintiff misinterprets the language in
2 question regarding LINA's notice obligations.

3 Plaintiff argues in the alternative that LINA was required to provide notice to Plaintiff
4 and/or Mr. Stewart because "it is industry-wide customary practice to send an insured a billing
5 statement." Plaintiff's Opp'n to LINA's Motion at 13:24-25. Such an alleged industry-wide
6 custom is not referenced in the terms of the group insurance contract, nor is there any evidence
7 that the parties bargained with reference to an industry-wide "notice" custom. As a threshold
8 matter, LINA asserts that extrinsic evidence of custom and practice is not admissible to inform
9 the meaning of the group insurance contract, because the contract is fully integrated. The patrol
10 evidence rule "generally prohibits the introduction of any extrinsic evidence, whether oral or
11 written, to vary, alter or add to terms of an integrated written instrument." *Hayter Trucking, Inc.*
12 *v. Shell Western E&P, Inc.*, 18 Cal.App.4th 1, 13-14 (1993).

13 Several exceptions to this rule are embodied in California Code of Civil Procedure §
14 1856, which provides: "(c) The terms set forth in a writing described in subdivision (a) may be
15 explained or supplemented by course of dealing or usage of trade or by course of performance."
16 The issue is whether any of the written terms of the group insurance contract "may be explained
17 or supplemented" by evidence of industry custom and practice.

18 Here, the contract lacks any express discussion of how or whether individual insureds
19 would be billed. Accepting Plaintiff's expert Bennett Bibel's assertions as true for purposes of
20 this motion only, it is the practice of insurance companies to bill individual insureds directly.
21 Supplementing the existing provisions concerning the generation of a premium statement with
22 the requirement that premium statements also be sent to individual insureds does not contradict
23 the express terms of the group insurance contract. Plaintiff has presented a triable issue of fact as
24 to whether in fact LINA's conduct, through its agent Wright & Co., did or did not conform to
25 industry custom and practice concerning notice to insureds.

26 There is no statutory provision requiring an insurer to provide notice for cancellation of
27 coverage under a life insurance contract, even though such notice is required for other forms of
28 insurance. *See* Cal. Ins. Code (Division 2, Part 1, Chapter 5) § 10430, *et seq.* However, Cal. Ins.

1 Code § 500 provides that “[w]henver any insurer has, as a regular course of conduct, sent
2 renewal premium notices to an insured, and intends to discontinue that practice, it shall notify
3 such insured of its intention not to send such notices.” It is not disputed that premium statements
4 were mailed to the Stewarts regularly prior to 1996 and supports Plaintiff’s assertion that it was
5 the insurer’s course of conduct, through its agent Wright & Co., to send premium notices to the
6 Stewarts. There is no evidence that any Defendant notified the Stewarts that the practice of
7 sending our premium notices would be discontinued. It remains to be proved whether
8 cancellation of the Stewart’s coverage was unlawful. Plaintiff and Mr. Stewart are not excused
9 indefinitely from the responsibility to pay premiums and/or to make timely inquiry as to the
10 status of their insurance coverage under the group plan when premium bills were not received.
11 However, the parties have not addressed the reasonableness of the Stewarts’ actions in light of
12 the circumstances of the case and/or industry practice. This creates a triable issue of fact under
13 Insurance Code § 500 and cannot be resolved at this time.

14 Plaintiff alleges that she has been damaged by LINA’s breach because she not been able
15 to recover the policy benefits due for life insurance on Mr. Stewart. For the purposes of this
16 motion only, damage to Plaintiff is assumed. Even if Plaintiff suffered damages, to be
17 compensable such harm must have been caused by LINA’s breach of the policy. Timely
18 payment of insurance premiums is a material condition of any contract of insurance and the
19 unjustified failure to pay premiums would be a material breach. However, if a trier of fact
20 determines the insurer failed to provide adequate notice of premiums due or notice of policy
21 termination, as well as the cessation of the practice of mailing premium payments, the Stewarts’
22 non-payment might have been excused for some period of time. These issues cannot be resolved
23 on summary judgment.

24 The only issues that remain are (1) whether LINA’s failure, through its agent, to send
25 notice of premiums statements was contrary to a custom and practice of the insurance industry;
26 (2) whether LINA established a course of conduct, through its agent, by mailing premium
27 renewal statements to the Stewarts, triggering an obligation to notify the Stewarts that it would
28 discontinue sending such statements; (3) whether LINA, through its agent, actually failed to send

1 premiums statements or a notice of discontinuance; (4) whether LINA's alleged failure to send
2 premium notices excused the Stewarts' nonperformance; and (5) whether, under the
3 circumstances, LINA "caused" the damage to Plaintiff or whether the Stewarts' non-payment of
4 premiums constitutes a material breach that excused any counter-performance by LINA.

5 Accordingly, LINA's motion for summary judgment on Plaintiff's breach of contract
6 claim is DENIED.

7 2. LINA's motion for summary judgment on Plaintiff's breach of covenant of good
8 faith and fair dealing claim is GRANTED for the reasons set forth below:

9 The implied covenant of good faith and fair dealing prohibits a party from injuring the
10 other party's right to receive benefits under the contract. *PPG Indus., Inc. v. Transamerica Ins.*
11 *Co.*, 975 P.2d 652, 655 (Cal. 1999). The Ninth Circuit has said, "[i]n order to establish a breach
12 of the implied covenant of good faith and fair dealing under California law, a plaintiff must
13 show: (1) benefits due under the policy were withheld; and (2) the reason for withholding
14 benefits was unreasonable or without proper cause." *Guebara v. Allstate Ins. Co.*, 237 F.3d 987,
15 992 (9th Cir. 2001) (citing *Love v. Fire Ins. Exch.*, 221 Cal.App.3d 1136, 1151 (1990)). "The
16 key to a bad faith claim is whether or not the insurer's denial of coverage was reasonable. Under
17 California law, a bad faith claim can be dismissed on summary judgment if the defendant can
18 show that there was a genuine dispute as to coverage." *Guebara*, 237 F.3d at 992.

19 There is a material dispute how contested lapse rules apply to the unique facts of this
20 case. In this case, a genuine coverage dispute existed in 1999 and there was a more than
21 colorable basis for LINA's denying Mr. Stewart's group coverage continued in force. Mr.
22 Stewart failed to pay his premiums after 1995 and his coverage lapsed under the express terms of
23 the policy. LINA's denial of benefits was not unreasonable in view of the good faith coverage
24 dispute. LINA's conduct does not rise to the level of bad faith as a matter of law. LINA is not
25 liable for a violation of the covenant of good faith and fair dealing for its denial of coverage.

26 3. LINA's motion for summary judgment on Plaintiff's Business & Professions
27 Code §17200 claim is GRANTED for the reasons set forth below:
28

1 Plaintiff only alleges a single act of misconduct against LINA under Business &
 2 Professions Code § 17200, arising from its allegedly improper denial of coverage under the
 3 group policy in question based on highly fact-specific circumstances.

4 To bring a claim under the California Unfair Competition Law, a plaintiff must show
 5 either an (1) “unlawful, unfair, or fraudulent business act or practice,” or (2) “unfair, deceptive,
 6 untrue, or misleading advertising.” *Lippitt v. Raymond James Fin. Servs.*, 340 F.3d 1033, 1043
 7 (9th Cir. 2003) (quoting Cal. Bus. & Prof. Code § 17200). The California Unfair Competition
 8 Law’s remedies are “ ‘cumulative...to the remedies or penalties available under all other laws or
 9 this state’ (§ 17205), but its sanctions are less severe than those of the Unfair Practices Act.
 10 Prevailing plaintiffs are generally limited to injunctive relief and restitution (§ 17203).” *Cel-*
 11 *Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal.4th 163, 179 (1999)
 12 (citing *ABC Int’l Traders, Inc. v. Matsushita Electric Corp.*, 14 Cal.4th 1247, 1268 (1997)).
 13 “Plaintiffs may not receive damages, much less treble damages, or attorney fees.” *Id.* (citing
 14 *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1266 (1992)).

15 Plaintiff relies on *Heighley v. J.C. Penney Life Ins. Co.*, 257 F.Supp.2d 1241, 1259-60
 16 (C.D.Cal. 2003), which identifies the essential allegations for a violation of the Unfair Practices
 17 Act: (1) Plaintiff’s status as an insured or intended beneficiary of an insurance policy; (2) a
 18 policy in existence; (3) the insurer’s conduct must be an unfair, unlawful, or fraudulent business
 19 practice in violation of Bus. & Prof. Code § 17200; (4) Plaintiff has no adequate remedy at law;
 20 (5) the request for injunctive relief and/or restitution (monetary damages are not recoverable
 21 under the UCA); and (6) a request for attorney’s fees.

22 Here, Plaintiff does not claim she has no adequate remedy at law. Her breach of contract
 23 claim will provide any benefits she is due. She does not seek injunctive relief for reinstatement
 24 of any insurance. Restitution is entirely inconsistent with the primary remedy she seeks, which
 25 is payment of the policy benefits in the form of damages. Plaintiff has not offered evidence that
 26 she or Mr. Stewart were deceived or misled by anything that LINA did. No Defendant is alleged
 27 to have told Mr. Stewart or Plaintiff that they would no longer be required to pay their premiums
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1 in 1996, or that an event had occurred that would absolve them of the responsibility to pay
2 quarterly insurance premiums after 1995.

3 To survive summary judgment under the Business & Professions Code, a Plaintiff must
4 prove that any statements made by LINA are misleading to a reasonable consumer. *Freeman v.*
5 *Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995). "Anecdotal evidence alone is insufficient to prove
6 that the public is likely to be misled." *William H. Morris Co. v. Group W, Inc.*, 66 F.3d 255, 258
7 (9th Cir. 1995) (per curiam).

8 Plaintiff does not indicate which "practice" by LINA rises to the level of "unfair,
9 unlawful, or fraudulent." The suggestion of "failure to investigate an insurance claim" is not a §
10 17200 unfair business practice. An unsupported opinion as to an alleged customary practice is
11 insufficient to establish that LINA engaged in any act or practice that could be interpreted as an
12 unfair business practice under § 17200. Even if, *arguendo*, such conduct violated § 17200,
13 money damages are not recoverable for such a violation, only restitution.

14 A breach of insurance contract, in a case where payment of premiums ceased over three
15 years before coverage was claimed, does not rise to the level of unfair, unlawful, or fraudulent
16 conduct. Under § 17200, Plaintiff may only seek relief under the statute if she has no adequate
17 remedy at law. *Cel-Tech*, 20 Cal.4th at 179. The record here is devoid of admissible evidence as
18 to any unfair business practice.

19 4. LINA's motion for summary adjudication on Plaintiff's claim for punitive
20 damages is GRANTED for the reasons set forth below:

21 Plaintiff cites Cal. Civ. Code § 3294(a) to support her contention that she is entitled to
22 punitive damages. Under the statute, Plaintiff is required to provide evidence that LINA was
23 guilty of "oppression, fraud, or malice." Cal. Civ. Code § 3294(a). Plaintiff alleges that Wright
24 & Co. "was well aware of the fact that its compute system and administrative process was
25 flawed" and LINA acted "maliciously and oppressively by ignoring Wright & Co.'s billing
26 errors." Plaintiff's Opp'n to LINA's Motion at 23:19-23; *see* Julian Decl. at Ex. 1. Plaintiff has
27 presented no evidence that LINA had any actual knowledge of any Wright & Co. billing error
28 affecting Mr. Stewart or Plaintiff when it allegedly occurred.

1 There is no evidence any breach arose from "oppression, fraud, or malice." The Ninth
2 Circuit recognizes, under California law, that a Plaintiff cannot recover punitive damages for a
3 simple contract. *Slottow v. American Casualty Co.*, 10 F.3d 1355, 1361 (9th Cir. 1993) (citations
4 omitted).

5 5. LINA's motion for summary judgment on Plaintiff's fraud claim is GRANTED
6 for the reasons set forth below:

7 Plaintiff does not allege the fraud claim against LINA. Plaintiff's Compl. at 13.
8 However, in an abundance of caution, LINA's motion for summary judgment on Plaintiff's fraud
9 claim is GRANTED.

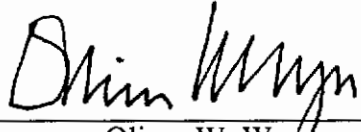
10 6. LINA's motion for summary judgment on Plaintiff's claim for declaratory relief
11 is GRANTED for the reasons set forth below:

12 Plaintiff seeks declaratory relief as to "respective rights" in order to "find a practical end
13 in quieting or stabilizing [a] ... disputed jural relation." Plaintiff's Opp'n to LINA's Motion at
14 22:14-19. LINA argues that because "Plaintiff is not entitled to recover on any of her above
15 claims, Plaintiff is not entitled to declaratory relief." LINA's Motion at 25:7-9.

16 Plaintiff does not explain how she is entitled to any prospective remedy except money
17 damages for breach of contract, or what future rights or duties of the parties remain to be
18 defined. There is no need for declaratory relief.

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20 IT IS SO ORDERED.

21 DATED: 4-29-, 2005

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23 Oliver W. Wagner
24 UNITED STATES DISTRICT JUDGE
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